IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1522 OF 2021
(corrected as per Speaking to Minutes order dated 8/9/2021)

Jagdish P. Jain	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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Mr.Kushal Mor with Sapana Rachure for the applicant.
Mrs.A.A. Takalkar, APP for the State.
HC Shri Vaibhav D Saigaonkar from EOW Raigad.

CORAM: BHARATI DANGRE, J.
DATED : 26th AUGUST, 2021

P.C:-

1 The applicant seek his release on bail in an offence registered with Alibag Police Station, and on completion of investigation, he is charged for the offence punishable under Section 406, 409, 420, 467, 468 of IPC. The said offence came to be registered on a complaint of one Mrs.Varsha Kantilal Jain on 22nd November 2019, alleging that the applicant had cheated the complainant by the acts averred in the complaint and it is also alleged that he forged the documents to obtain the necessary permissions and the complainant was defrauded by embezzling amount of Rs.2,80,97,360/-, for his own benefit.

2 The applicant came to be arrested on 27th August 2020 and was produced before the learned JMFC. Investigation was handed over to the Economic Offences Wing (EOW), Alibag and on its completion, a final report under Section 173 vide Charge Sheet no. 39 of 2020 was filed on 1st October 2021.

3 Before consideration of the contentions advanced by the learned counsel Mr.Kushal Mor for the applicant, it is necessary to briefly refer to the case of the prosecution as it surfaced in the charge-sheet.

The complainant, wife of one Mr.Kantilal Jain had entered into a partnership deed with the applicant in the year 2010 and the partnership firm was styled as M/s.Jain Builders and Developers". The partnership firm opened a joint account in HDFC Bank, Alibag. It is alleged that the firm purchased two plots of land with a proposal to construct two buildings. The work of construction was allotted to K.P. Construction Co, owned by the complainant's husband. It is alleged that the construction work commenced and in the mid way, her husband found that the applicant had misused some cheques and has indulged himself in a fraud. This gave rise to a dispute between the two and it is alleged that the applicant eliminated her husband on 30th October 2015 by assaulting him with deadly weapon. A case of murder was registered at Roha Police Station in which the applicant was arraigned as the main accused and he came to be arrested. He was enlarged on bail in the month of July 2016.

4 The accusation against the applicant is, after being released on bail, he proceeded with the construction work on the remaining portion of land by holding meetings with the prospective buyers. This is alleged to have been done without the complainant being informed, though she was 50% partner in the said firm. It is alleged that the plot which was jointly owned being plot no.16, area admeasuring 5 gunthas which was non-agricultural land, the applicant started the construction and her family in the year 2017, which was not objected to, since the complainant was fearful of the applicant. It is alleged that the applicant in connivance with the Officers in the Revenue Department, employees of the Gram Panchayat and with the backing of political leaders, obtained necessary permissions for the construction and erected a three floor building along with parking space, which housed 10 flats. The complainant alleged that since she was a widow and a destitute woman, three flats from the earlier building and three flats from the newly constructed 10 flats came to be sold. It is further alleged that the amount received from the two flats which were booked in the year 2015 was also misappropriated by the applicant. On inspecting the account of the partnership firm, for the period commencing from 2010-2015, it is revealed to her that a whopping sum of

Rs.1,92,00,000/- is deposited in the said account, which has been used by the applicant for his own purpose. It is further alleged that the applicant has also effected registration of six flats without her consent, which had yielded him an amount of Rs.1,64,39,360/-. It is further alleged that for selling the flats by executing sale deed, the name of the firm and the PAN card is put to use.

The accusation faced by the applicant at the instance of the complainant is that the whole activity undertaken by the applicant is without her consent, ignoring that she was a partner of the said firm.

5 The charge-sheet reflect that on 11th August 2010, a registered partnership deed was executed between the applicant and the complainant and a piece of land in form of Plot Nos.3 and 6 from Survey No.120 of Chendhare, Taluka Alibag and another piece of land from Survey No.122/1, plot no.16 was procured in the name of partnership firm. As per the understanding, the construction work was allotted to the husband of the complainant and the profits were to shared to the extent of 50% between them. The complainant is the partner with the applicant and they actively worked in the said capacity and a joint account is opened in the HDFC Bank in the name of the firm. The submission that in the intervening night of 30th October 2015 and 31st October 2015, the husband of the informant died a

homicidal death and on the basis of circumstantial evidence, the applicant was roped in as an accused. By an order passed on 10th August 2016 by the High Court, the applicant came to be released on bail with observation that on perusal of the charge-sheet, there is no tangible evidence regarding motive with the applicant to eliminate the deceased, recording that the case was based on circumstantial evidence, it was not possible to hold that there is a *prima facie* case of offence punishable under Section 302 of the IPC, the applicant came to be released on bail. The said order was formed by the Apex Court in Special Leave Petition (SLP) Criminal No.103/2017 by its order dated 22nd January 2018.

6 On being released on bail, it came to the notice of the applicant that the complainant had accepted payment from purchasers and on 11th April 2017, he filed a complaint with Alibag Police Station against the complainant. He also addressed letters to the Electronic Distribution Company, pointing out that various electronic meters are allotted to the complainant without making any application. Pertinent to note that certain purchasers had filed complaints against the partnership firm before the District Consumer Forum, Raigad, and by order dated 6th August 2018, complaints were partly allowed directing the firm to hand over possession of premises constructed by the firm and to pay the damages to the tune of the amount mentioned in the order. The statement of the applicant is to the effect that since the

partnership continued between the applicant and complainant, in the wake of the order passed by the Consumer Forum, it was necessary to complete the construction by obtaining necessary permissions in order to abide by the construction of the Consumer Forum. Thus, he constructed 10 flats and the same were made over to the prospective purchaser.

7 When the allegations in the FIR are carefully perused, it revolve around the business of the partnership firm and the charge-sheet clearly reveal that the complainant and the applicant are partners, in a firm formed for undertaking development of the plots purchased and both of them share 50% of rights and liabilities and the duration of partnership is "at Will". The joint account opened in the name of firm permit both the partners to operate the same jointly and the covenant of the partnership deed contain a clause to the effect that no partnership can borrow or lend money or pledge, mortgage, hypothecate or lean the property of the firm without consent of the other or sell the share in the firm to the developer. The documents also disclose that certain permissions are sought at the instance of the applicant, whereas other permissions are sought in the name of the complainant with the order of the Consumer Forum directing the flats to be made over to the buyers within a period of 30 days, which are compiled in the charge-sheet, it had become incumbent on the partnership firm to proceed with the construction, in

absence of which they were liable for action or breach of the order. The decision taken by the applicant *prima facie* reveal that they are the decisions of the partner who is authorized to take necessary steps for construction of the flats and for its disposal.

8 The moot question that arises for consideration is whether the offence of criminal breach of trust punishable under Section 406 of IPC is made out, in the given circumstances, when the activities of the applicant are attributed as partner of the firm in which the complainant is a counter part. The Hon'ble Apex Court in case of *Velji Raghavji Patel Vs. State of Maharashtra, 1965 AIR 1433,* the Apex Court has observed as under :-

> *7 It seems to us that the view taken in Bhuban Mohan Rana's case(1) by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of S. 405 IPC, it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S.405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his*

dominion was the result of entrustment. Therefore, as rightly pointed out by Harris C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fidu- ciary capacity or in other words cannot be hold to have been "entrusted" with dominion over partnership properties".

9 In the wake of the aforesaid observations, since prima facie the act of the applicant would not attract the ingredients of criminal breach of trust and as far as the allegations faced in respect of other offences, he has undergone a thorough investigation and the material qua the applicant is already compiled in the charge-sheet. Further incarceration of the applicant is unwarranted. There is no material placed on record indicating that the applicant if released on bail, will tamper with the prosecution evidence or he will flee the course of justice. The Addl. Sessions Judge, Raigad has rejected the application on the ground that the applicant is a history- sheeter, warrant no merit in the wake of the order passed by this Court on 10th August 2016 where the applicant was held entitled for being released on bail. The applicant is therefore, entitled for being enlarged on bail by the following order :-

O R D E R

(a) The Applicant – Jagdish P. Jain in connection with C.R.No.89 of 2020 registered with Alibag Police Station, shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.

(b) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(c) The Applicant shall mark his attendance on every Monday to the concerned police station on every Monday between 10.00 am to 1.00 p.m, till the charge is framed and thereafter as directed by the Sessions Court.

The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J

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